

MAR 15 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NORMAN CURRY,

Plaintiff - Appellant,

v.

STATE OF NEVADA; et al.,

Defendants - Appellees.

No. 04-16404

D.C. No. CV-01-01247-JCM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted March 8, 2006**

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Norman Curry appeals pro se the district court's order granting summary judgment to the defendants in Curry's employment discrimination action. We have jurisdiction pursuant to 28 U.S.C. § 1291. Reviewing de novo, *Balint v. Carson City*, 180 F.3d 1047, 1050 (9th Cir. 1999) (en banc), we affirm.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Curry received a notice of non-reappointment to an academic administrative position on July 3, 1999. He filed a complaint with the EEOC in May 2000 which described actions occurring on or before July 6, 1999, more than 180 days prior to the complaint. *See* 42 U.S.C. § 2000e-5(e)(1) (requiring claims presented first to the EEOC to be filed within 180 days of the alleged discrimination). Curry's contention that his complaint was nevertheless timely as it described a hostile work environment is unpersuasive, because "claims based on a hostile environment are only timely where at least one act occurred during the limitations period." *Cherosky v. Henderson*, 330 F.3d 1243, 1246 (9th Cir. 2003); *see also* *Porter v. Cal. Dep't of Corr.*, 419 F.3d 885, 893 (9th Cir. 2005) ("If the flames of an allegedly hostile environment are to rise to the level of an actionable claim, they must do so based on the fuel of timely non-discrete acts.").

Moreover, Curry's contention concerning the revocability of his non-reappointment does not justify tolling the statute of limitations. *See RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1060 (9th Cir. 2002) ("[O]ur focus remains on the operative decision, even when further procedures might result in its reversal."). Accordingly, the district court properly determined that Curry's claims were time-barred. *See Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 122 (2002).

We grant Curry's motion to file an untimely reply brief. The Clerk shall file the brief received on February 9, 2005.

AFFIRMED.